IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7102 OF 2004

Shankar Moreshwar Choudhari ... Petitioner

versus

Abdul Hamid Gafoor Shaikh

and another ... Respondents

...

Mr. P.N. Karlekar, for the Petitioner.

...

CORAM : A.M.KHANWILKAR,J.

3rd September 2004

P.C.:

. I am not inclined to interfere with the discretionary order passed in exercise of writ jurisdiction. The Court below has rightly found that there is already a commissioner’s report on record and further report for the sme purpose was unwarranted. To get over this position, Mr. Karlekar contends that the earlier report has nothing to do with the report now required to be obtained from the architect. Mr. Karlekar contends that during the evidence, the plaintiff

has accepted the position that certain repairs have been carried out and the nature of repairs and the amount spent for the said repairs will have to be ascertained, which can be done by the architect to be appointed as Court Commissioner. It is well-settled that the Court Commissioner cannot be appointed for collection of evidence. The nature of repairs and the amount spent for the said repairs is matter of evidence, which will have to be adduced and established on record. Even for that reason, the order as passed by the Court cannot be faulted. Hence, dismissed.

. At this stage, Mr. Karlekar contends that at least the Petitioner be given option to examine the architect to adduce necessary evidence. Indeed, if such application is filed by the Petitioner before the trial Court, the trial Court may proceed to pass appropriate orders in accordance with law.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)